

FILED
UNITED STATES DISTRICT COURT OFFICE
DISTRICT OF MASSACHUSETTS
2004 FEB 5 P 12:19
CLERK OF COURT
DISTRICT OF MASS.

DESIREE ALLAIRE)

Plaintiff,)

v.)

CIVIL ACTION NO. 03-CV-12566 RWZ

JODAN KALEMRA, alias, a/k/a)

JODAN KALEMBA, RYDER TRUCK)

RENTAL, LT., RTRT, INC. in its capacity)

As trustee for the Ryder Truck Rental, Lt.)

RYDER TRUCK RENTAL, INC.,)

IRON MOUNTAIN OFF-SITE DATA,)

INC. f/k/a ARCUS DATA SECURITY,)

INC., JOHN DOES 1-5)

Defendants.)

**DEFENDANTS', JODAN KALEMRA, alias, a/k/a JODAN KALEMBA,
AND IRON MOUNTAIN OFF-SITE DATA, INC. f/k/a
ARCUS DATA SECURITY, INC., ANSWER TO PLAINTIFF'S COMPLAINT**

Defendants, Jodan Kalemra, alias, a/k/a Jodan Kalemmba, whose true name is Kalemmba Jodan, and Iron Mountain Off-Site Data, Inc. f/k/a Arcus Data Security, Inc. ("Defendants"), hereby make this their Answer to the Plaintiff's, Desiree Allaire ("Plaintiff"), Complaint, as follows:

FIRST DEFENSE

JURISDICTION

Defendants state that this paragraph contains legal conclusions for which no answer is necessary; however, to the extent a response is required, the Defendants deny the allegations contained in this paragraph.

PARTIES

1. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the Plaintiff to prove the same.
2. Defendants admit that Kalembo Jodan resides at 248 Calvary Street, Waltham, Massachusetts.
3. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the Plaintiff to prove the same.
4. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the Plaintiff to prove the same.
5. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the Plaintiff to prove the same.
6. Defendants admit the allegations contained in this paragraph.
7. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the Plaintiff to prove the same.

FACTS

8. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the Plaintiff to prove the same.
9. Defendants admit the allegations contained in this paragraph.
10. Defendants state that this paragraph contains legal conclusions for which no answer is necessary; however, to the extent a response is required, the Defendants deny the allegations contained in this paragraph.
11. Defendants deny the allegations contained in this paragraph.
12. Defendants state that this paragraph contains legal conclusions for which no answer is necessary; however, to the extent a response is required, the Defendants deny the allegations contained in this paragraph.

COUNT I

13. Defendants repeat and incorporate by reference their answers to paragraphs 1 through 12 and make them their answer to this paragraph.
14. Defendants deny the allegations contained in this paragraph.
15. Defendants deny the allegations contained in this paragraph.
16. Defendants deny the allegations contained in this paragraph.

WHEREFORE, Defendants demand that Plaintiff's Complaint be dismissed and that judgment enter in favor of Defendants together with its costs, interest and reasonable attorneys' fees.

COUNT II

17. Defendants repeat and incorporate by reference their answers to paragraphs 1 through 16 and make them their answer to this paragraph.
18. Defendants deny the allegations contained in this paragraph.
19. Defendants deny the allegations contained in this paragraph.
20. Defendants deny the allegations contained in this paragraph.

WHEREFORE, Defendants demand that Plaintiff's Complaint be dismissed and that judgment enter in favor of Defendants together with its costs, interest and reasonable attorneys' fees.

COUNT III

21. Defendants repeat and incorporate by reference their answers to paragraphs 1 through 20 and make them their answer to this paragraph.
22. Defendants deny the allegations contained in this paragraph.
23. Defendants deny the allegations contained in this paragraph.
24. Defendants state that this paragraph contains legal conclusions for which no answer is necessary; however, to the extent a response is required, Defendants deny the allegations contained in this paragraph.
25. Defendants deny the allegations contained in this paragraph.
26. Defendants deny the allegations contained in this paragraph.
27. Defendants deny the allegations contained in this paragraph.

WHEREFORE, Defendants demand that Plaintiff's Complaint be dismissed and that judgment enter in favor of Defendants together with its costs, interest and reasonable attorneys' fees.

COUNT IV

28. Defendants repeat and incorporate by reference their answers to paragraphs 1 through 27 and make them their answer to this paragraph.
29. Defendants state that this paragraph contains legal conclusions for which no answer is necessary; however, to the extent a response is required, Defendants deny the allegations contained in this paragraph.
30. Defendants deny the allegations contained in this paragraph.
31. Defendants deny the allegations contained in this paragraph.
32. Defendants deny the allegations contained in this paragraph.

WHEREFORE, Defendants demand that Plaintiff's Complaint be dismissed and that judgment enter in favor of Defendants together with its costs, interest and reasonable attorneys' fees.

COUNT V

33. Defendants repeat and incorporate by reference their answers to paragraphs 1 through 32 and make them their answer to this paragraph.
34. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and call upon the Plaintiff to prove the same.
35. Defendants state that this paragraph contains legal conclusions for which no answer is necessary; however, to the extent a response is required, Defendants deny the allegations contained in this paragraph.
36. Defendants deny the allegations contained in this paragraph.
37. Defendants deny the allegations contained in this paragraph.

WHEREFORE, Defendants demand that Plaintiff's Complaint be dismissed and that judgment enter in favor of Defendants together with its costs, interest and reasonable attorneys' fees.

SECOND DEFENSE

FIRST AFFIRMATIVE DEFENSE

And further answering, Defendants state that Plaintiff's Complaint should be dismissed pursuant to Rule 12(b)(6) for failure to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

And further answering, Defendants state that to the extent they had any obligations to the Plaintiff, such obligations have been fully, completely and properly performed in every respect.

THIRD AFFIRMATIVE DEFENSE

And further answering, Defendants state that the Plaintiff's claims are barred by the doctrine of laches.

FOURTH AFFIRMATIVE DEFENSE

And further answering, Defendants state that the Plaintiff's claims are barred by the doctrine of waiver.

FIFTH AFFIRMATIVE DEFENSE

And further answering, Defendants state that the Plaintiff's claims are barred by the doctrine of estoppel.

SIXTH AFFIRMATIVE DEFENSE

And further answering, Defendants state that to the extent Plaintiff's claims resulted from modifications and/or alterations made by other persons or entities, the claims in this action must fail against Defendants.

SEVENTH AFFIRMATIVE DEFENSE

And further answering, Defendants say that the acts complained of were not committed by a person for whose conduct Defendants were legally responsible.

EIGHTH AFFIRMATIVE DEFENSE

And further answering, Defendants say that if Plaintiff proves that Defendants were negligent as alleged, Plaintiff was negligent to a greater degree than Defendants and is barred from recovery under the Comparative Negligence Law of the Commonwealth of Massachusetts.

NINTH AFFIRMATIVE DEFENSE

And further answering, Defendants state that there was insufficient process pursuant to Rule 12(b)(4).

TENTH AFFIRMATIVE DEFENSE

And further answering, Defendants state that there was insufficiency of service of process pursuant to Rule 12(b)(5).

ELEVENTH AFFIRMATIVE DEFENSE

And further answering, Defendants state that Plaintiff's Complaint should be dismissed pursuant to Rule 12(b)(8) for misnomer of a party.

TWELFTH AFFIRMATIVE DEFENSE

And further answering, Defendants state that Plaintiff's Complaint should be dismissed to the extent it is barred by the applicable statute of limitations.

THIRTEENTH AFFIRMATIVE DEFENSE

And further answering, Defendants reserve the right to raise additional affirmative defenses after discovery under Rule 8(c) of the Federal Rules of Civil Procedure.

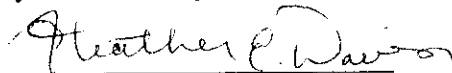
CLAIM FOR JURY TRIAL

DEFENDANTS HEREBY CLAIM A TRIAL BY JURY ON ALL ISSUES.

Respectfully submitted,

The Defendants,
Jodan Kalemra, alias, a/k/a Jodan Kalembe,
whose true name is Kalembe Jodan, and Iron
Mountain Off-Site Data, Inc. f/k/a Arcus Data
Security, Inc.

By their attorneys,



Mark B. Lavoie, BBO# 553204
Heather E. Davies, BBO# 651739
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CERTIFICATE OF SERVICE

I, Heather E. Davies, Esq., hereby certify that on February 5, 2004, I served a copy of the foregoing Answer to the Plaintiff's Complaint by mailing, via regular U.S. mail, to the following: Scott DeMello, Esq., DeMello & Clark, 109 Oak Street, Newton, MA 02464, Ryder Truck Rental, Lt., 101 Federal Street, Boston, MA 02110, RTRT, Inc., 84 State Street, Boston, MA 02109 and Ryder Truck Rental, Inc., 220 Tapley Street, Springfield, MA 01104.



Heather E. Davies, Esq.